

INFORMATION FOR OUT-OF-STATE REAL ESTATE BROKERS**

This Guideline is designed to inform out-of-state real estate brokers that, in order to engage in any real estate brokering activities involving Idaho property, the broker must hold an active Idaho real estate license.

1. An Idaho license is required to engage brokering real property located in Idaho.

Idaho law flatly prohibits anyone from engaging in acts of an Idaho “real estate broker” without an active Idaho real estate license.

A “real estate broker” is defined in Idaho Code Section 54-2002 to include any person who, directly or indirectly, while acting on behalf of another for compensation or promise or an expectation there of, does any of the following: sells, lists, buys, negotiates or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest there in. A “real estate broker” also includes any person who represents to the public they are engaged in any of the above activities. It also includes any person who engages in the procurement of prospects.

The Idaho Real Estate License Law also prohibits out-of-state brokers from advertising, or being named in an advertisement concerning, real property that is located in Idaho.

2. Referrals and payment of referral fees are permitted.

If an out-of-state broker has a customer or client wishing to purchase real property in Idaho, the Idaho License Law allows the out-of-state brokerage to *refer* the client to a licensed Idaho brokerage, and for the Idaho brokerage to pay a *referral fee* to the out-of-state brokerage. See Section 54-2054. However, the Idaho brokerage must handle *all* aspects of the transaction from that point on.

Examples of activities for which an Idaho license is required include, but are not limited to:

- advertising the property;
- showing the property;
- preparing purchase and sale agreement forms; and
- negotiating of the purchase and sale agreements.

*** In this Guideline, “out-of-state broker” is a broker that does not hold an active Idaho real estate license.*

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It is not enough for an out-of-state brokerage to simply “refer” the buyer but then continue to perform the licensed real estate brokering activities in this state. Without an Idaho license, the out-of-state brokerage cannot engage in *any* acts of a “real estate broker” with respect to property located in this state.

Likewise, if an out-of-state brokerage has a seller who owns Idaho real property and wishes to sell it, the out-of-state broker may *refer* the seller to an Idaho licensed brokerage and receive a referral fee. Idaho law does *not* allow for “co-listing” with an unlicensed brokerage.

3. Sanctions for unlicensed activity.

Unlicensed brokering activity is a misdemeanor crime in Idaho punishable by imprisonment and a fine of \$5,000 for individuals and \$10,000 if a business entity is involved. In addition, the Idaho Real Estate Commission is authorized to take administrative action against anyone engaged in unlicensed activity, and to assess a civil penalty up to \$5,000 and \$10,000, plus costs and attorney fees.

The pertinent sections of the *Idaho Real Estate License Law and Rules* are the following:

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| 1. | 54-2002. | Licensure Required. |
| 2. | 54-2004. | Definitions |
| 3. | 54-2054. | Compensation, Commission and Fees-Prohibited Conduct. |
| 4. | 54-2053. | Advertising. |
| 5. | 54-2058. | Authority to Investigate and Discipline. |
| 6. | 54-2064 | Proof of Complaint-Prosecution by County Prosecuting Attorney. |
| 7. | 54-2065. | Penalty for Acting as a Broker or Salesperson Without License. |

IDAHO REAL ESTATE LICENSE LAW (Select provisions)

54-2002. Licensure Required. No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefore. Unless exempted from this chapter, any single act described within the definitions of “real estate broker” or “real estate salesperson” shall be sufficient to constitute “engaging in the business” within the meaning of this chapter. Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho Real Estate Commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

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54-2004. Definitions.

As used in this chapter:

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(32) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others.

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth.

(e) A dealer in options as defined in this section.

(33) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (31) of this section.

54-2053. ADVERTISING. (1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

(2) All advertising of listed property shall contain the broker's licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.

(3) All advertising by licensed branch offices shall contain the broker's licensed business name.

(4) No advertising shall provide any information to the public or to prospective customers or clients which is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence. (1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

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54-2054. Compensation, Commissions and Fees - Prohibited Conduct.

(1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to a legal business entity, all of whose shareholders, members or other persons having a similar ownership interest are active real estate licensees. An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(4) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate,

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for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction. It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

54-2058. Authority to Investigate and Discipline.

General authority to investigate. The Commission may investigate the action of any person engaged in the business or acting in the capacity of real estate broker or salesperson within the state of Idaho, or any person believed to have acted as a real estate broker or salesperson without a license in violation of section 54-2002, Idaho Code. Upon receipt of a written complaint from anyone who claims to have been injured or defrauded as a result of such action, or upon information received by the Executive Director, the Executive Director shall perform an investigation of the facts alleged against such real estate broker or salesperson or such unlicensed person. Prior to the initiation of any proceedings for the revocation or suspension of a license, or for such other disciplinary actions as set forth in section 54-2059, Idaho Code, the Executive Director shall transmit to the Commission a report, in writing, signed by the Executive Director, setting forth the facts alleged against such real estate broker or salesperson or unlicensed person. Upon receiving such report, the Commission shall make an examination of all the facts and circumstances connected with such report. If the facts set forth in the report are deemed insufficient by the Commission, no further action shall be taken, unless the Executive Director resubmits the report with additional facts supporting the filing of an administrative complaint. Should the Commission deem that the facts set forth in the report are sufficient to proceed with a formal action, the Commission shall authorize the filing of an administrative complaint against such person.

A person is acting "within the state of Idaho" if that person is dealing with any interest in real property or a business opportunity involving an interest in real property, which is situated in this state, or is conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

54-2064. Proof of Complaint - Prosecution by County Prosecuting Attorney.

The Commission may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction. It shall be the duty of the prosecuting attorney of each county

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in the state to prosecute all violations of the provisions of this chapter in their respective counties in which the violations occur.

54-2065. Penalty for Acting as a Broker or Salesperson Without License.

Any person acting as a real estate broker or real estate salesperson within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, if a natural person, be punished by a fine of not to exceed five thousand dollars (\$5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment in the discretion of the court or if a limited liability company or corporation, by a fine of not to exceed ten thousand dollars (\$10,000). Additionally, the court may assess a civil penalty against a natural person in an amount not to exceed five thousand dollars (\$5,000), and against a limited liability company or corporation, in an amount not to exceed ten thousand dollars (\$10,000). All civil penalties shall be credited to the special real estate fund.